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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

EDWARD BRELAND,

Plaintiff and Appellant,

v.

CHARLES GREEN, as Trustee, etc.,

Defendant and Respondent.

D052913

(Super. Ct. No. P191535-1B)

APPEAL from an order of the Superior Court of San Diego County, Julia Craig Kelety, Judge. Affirmed.

Edward Breland, representing himself in propria persona, appeals from an order dismissing the petition he filed in the probate court. The probate court dismissed the petition because of Breland's failure to comply with an order compelling discovery and requiring the payment of sanctions. As we will explain, we conclude that the trial court did not abuse its discretion in dismissing the action, and accordingly we affirm.

# I

## FACTUAL AND PROCEDURAL BACKGROUND

In August 2006, following the death of his aunt, Breland filed a petition in the probate court to contest the disposition of property which had been the subject of his aunt's living trust, The Family Trust of Bettie J. Washington (the Trust). Breland contended, among other things, that the disposition of his aunt's real property was at least in part controlled by a previous living trust. At the time he filed his petition Breland was represented by counsel. Charles Green, individually and as trustee of the Trust, filed a reply to the petition.

Green propounded discovery on Breland, consisting of form interrogatories, special interrogatories, a demand for the production of documents and requests for admission. Breland's discovery responses were due on August 3, 2007, and at the request of Breland's counsel the deadline was extended to August 10, 2007. Breland did not respond by the extended deadline.

On August 15, 2007, Breland filed a substitution of attorney stating that he was now representing himself. Pursuant to court rules, Green noticed an ex parte hearing for leave to bring a motion to compel discovery. At the ex parte hearing, the probate court gave Green leave to file a motion to compel discovery, which was set for October 16, 2007, but ordered that the motion would not go forward if, in the interim, Breland served adequate discovery responses.

Breland, still representing himself, served responses to the discovery on September 25, 2007. The responses were unsigned and unverified and did not include the

required content or follow the required format. Accordingly, Green deemed the responses to be inadequate and proceeded with the motion to compel discovery. Breland appeared at the hearing on the motion with a new attorney who substituted into the case. The probate court granted the motion to compel, ordering Breland to serve verified responses by October 30, 2007. As a sanction, the trial court also ordered Breland to pay Green's attorney fees and costs in the amount of \$2,027.

By January 22, 2008, Breland had not served the discovery responses ordered by the court and had not paid the sanctions. Accordingly, Green filed a motion seeking terminating sanctions against Breland on the ground that Green had disobeyed an order of the court. Breland did not file a written opposition to the motion. Breland did, however, appear at the hearing along with his attorney.<sup>1</sup>

The probate court granted Green's motion for terminating sanctions and dismissed the case. It explained that terminating sanctions were warranted because (1) Breland had disobeyed the court's order compelling discovery; (2) Breland appeared to have abandoned his petition because he did not respond to Green's motion for terminating sanctions; and (3) there appeared to be no other measures likely to assure Breland's compliance with future court orders. The court also ordered that Breland pay monetary sanctions to Green in the amount of \$1,800.

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<sup>1</sup> At the hearing, counsel for Breland mentioned that Breland had a criminal case pending against him and stated that the pending criminal case was one of the reasons Breland had demonstrated a lack of interest in going forward with the petition.

Breland, representing himself in propria persona, filed a notice of appeal from the probate court's order dismissing the petition and imposing monetary sanctions.

## II

### DISCUSSION

In his appellate briefing, Breland does not directly address the question of whether the trial court erred in imposing terminating sanctions and dismissing the case. Instead, his argument appears to be that we should consider the merits of his petition. We will not reach the merits of Breland's petition, as our role is limited to reviewing the order from which Breland appeals. Accordingly, our task in this appeal is to consider whether the trial court erred in granting Green's motion for the imposition of terminating sanctions.

We apply an abuse of discretion standard in determining whether the trial court erred in imposing a sanction for a party's failure to comply with orders concerning discovery.<sup>2</sup> (*Kuhns v. State of California* (1992) 8 Cal.App.4th 982, 988 ["In choosing among its various options for imposing a discovery sanction, a trial court exercises discretion, subject to reversal only for manifest abuse exceeding the bounds of reason"].)

According to statute, when a party disobeys a court order compelling it to respond to interrogatories or demands for production, a court is authorized to impose a terminating sanction. (Code Civ. Proc., §§ 2030.290, subd. (c) [failure to comply with an

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<sup>2</sup> Breland correctly notes that a de novo standard of review is applicable to any question of statutory interpretation that we must address while reviewing a trial court's imposition of a discovery sanction. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 401.) However, in this case no question of statutory interpretation is presented.

order compelling answers to interrogatories], 2031.300, subd. (c) [failure to comply with an order compelling responses to a demand for production], 2023.030, subd. (d) [terminating sanctions may be imposed when authorized by a specific statutory provision].) "Repeated failure to respond to discovery and to comply with court orders compelling discovery provides ample grounds for imposition of the ultimate sanction. . . . A party who is unwilling to, or whose counsel is incapable of, performing the obligations of litigation with diligence should not be surprised when the right to proceed is lost." (*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1069, citations omitted.) "[W]here a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280.)

Here, Breland did not comply with the probate court's order compelling him to serve discovery responses and pay sanctions to Green. Breland also did not respond to Green's motion for the imposition of terminating sanctions. As the probate court explained, under those circumstances it appeared that there was no other means to enforce Breland's compliance with court orders. We conclude that in light of the facts of this case, the trial court acted within its discretion in imposing terminating sanctions on Breland.

DISPOSITION

The order dismissing the petition and imposing monetary sanctions is affirmed.

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IRION, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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McDONALD, J.